

5th December,
2024
(AK)
04

S.A. 770 of 1995
IA No: CAN 1 of 2019
(Old No: CAN 2194 of 2019)
CAN 2 of 2019
(Old No: CAN 2195 of 2019)
CAN 3 of 2019
(Old No: CAN 2196 of 2019)
CAN 4 of 2019
(Old No: CAN 6252 of 2019)

Sitaram Mistri
Vs.
Sadananda Dutta and others

Mr. Bibek Jyoti Basu
Mr. Uttam Kr. De
...for the appellant/petitioner.

1. CAN 2 of 2019 is an application for condonation of delay in preferring CAN 2195 of 2019 which is an application for restoration of the second appeal which was dismissed for non-compliance of court's order.
2. CAN 2196 of 2019 is an application for substitution of the heirs of the original appellant.
3. The brief facts of the case relevant in the context are that the appeal was dismissed for non-compliance of court's order on July 30, 1997. The original appellant (since deceased) met his demise on October 17, 2006.
4. Learned counsel appearing for the appellant submits that the present applicants have stepped

into the shoes of the original appellant and were not aware of the pendency of the appeal.

5. Even, thereafter, in 2017, the Advocate originally conducting the appeal expired.
6. The present petitioners came to know of the appeal only at a subsequent point of time when in the year 2019, they were given a threat of eviction and came to know about the connected execution case.
7. Upon a careful perusal of the averments made, we are not satisfied as to the sufficiency of the delay occasioned in preferring the appeal, at least from July 30, 1997, when the appeal was dismissed for non-compliance of court's order, till October 17, 2006, when the original appellant died.
8. No explanation whatever is available to us as to what prevented the original appellant for the long period of almost a decade from taking information of his appeal.
9. Learned counsel for the petitioner seeks to impress upon the court that the appellant was ill during the relevant period.
10. However, the seriousness of an illness such as to prevent the appellant from taking information of his pending appeal for the long period of nine years is not borne out by the records.
11. The present petitioners have stepped into the shoes of the original appellant, since deceased, and thus

are also tainted by such lacuna on the part of the original appellant.

12. Accordingly, we are not inclined to condone the immense delay in preferring the present applications.
13. Accordingly, CAN 1 of 2019 (Old No: CAN 2194 of 2019) is dismissed.
14. Consequentially, CAN 2 of 2019 (Old No: CAN 2195 of 2019) and CAN 3 of 2019 (Old No: CAN 2196 of 2019) are dismissed as well.
15. There will be no order as to costs.
16. Since the appeal already stands dismissed for non-compliance of the court's order, no further order need be passed in connection with the appeal.

(Sabyasachi Bhattacharyya, J.)

(Gaurang Kanth, J.)